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DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

January 30, 2015

TO: The Honorable Della Au Belatti, Chair
House Committee on Health

FROM: Rachael Wong, DrPH, Director

SUBJECT: **H.B. 582 - RELATING TO THE NURSING FACILITY
SUSTAINABILITY PROGRAM**

Hearing: Friday, January 30, 2015; 10:10 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of the bill is to continue the Nursing Facility Sustainability Program for an additional year, appropriate funds out of the Nursing Facility Program Special Fund and remove the exemption of the Special Fund from the Central Service Expenses assessment and Administrative Expenses assessment under sections 37-27(a) and 36-30(a), Hawaii Revised Statutes.

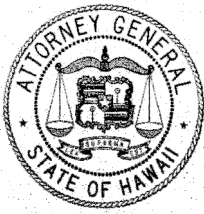
DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this measure that proposes to extend the Nursing Facility Sustainability Program for another year. The DHS and the Healthcare Association of Hawaii have worked collaboratively on the Nursing Facility Sustainability Program Fund and this bill will continue to help sustain nursing facilities so that there will be continued access to needed resources by the residents of the State.

The Administration's bills, H.B. 934 and S.B. 1103, also propose to extend the Nursing Facility Sustainability Program. The Department respectfully requests the language addressing technical amendments to the statute and language that preserves the exemption from Section 36-27, Hawaii Revised Statutes (HRS), and Section 36-30, HRS, be referenced. Specifically exemptions from Section 36-27, HRS, and Section 36-30, HRS, are currently set to be repealed on December 31, 2015. Language in H.B. 934 and S.B. 1103 will ensure the exemption will remain until December 31, 2016.

Without these two exemptions from the central services expenses fee (Section 36-27, HRS) and the department administrative expenses fee (Section 36-30, HRS), the Nursing Facility Sustainability Program will have to pay \$600,000 in central services expenses assessed under section 36-27, HRS, and \$120,000 for departmental administrative services expenses assessed under section 36-30, HRS, for state fiscal year 2016. Without the exemption, the Department will not be able to use the total of \$720,000 for direct services that would help sustain nursing facilities and improve services to Medicaid recipients.

The Nursing Facility Sustainability Program fee is levied on non-governmental nursing facilities and the revenue from the program fee is used to leverage federal funds and increase reimbursements to nursing facilities, with a greater benefit to those providing proportionately more services to Medicaid recipients. These additional moneys will increase the sustainability of nursing facilities in Hawaii to continue as a critical part of the long-term care safety-net.

In fiscal year 2012-2013, the nursing facilities were assessed \$11,535,405 in sustainability fees and received \$21,086,740 in additional reimbursement; in fiscal year 2013-2014 nursing facilities were assessed \$11,436,642 and received \$20,906,201 in additional



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:

H.B. NO. 582, RELATING TO THE NURSING FACILITY SUSTAINABILITY PROGRAM.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Friday, January 30, 2015

TIME: 10:10 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
LEE-ANN N.M. BREWER, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Attorney General provides the following amended comments on this measure, which supersede the testimony submitted on January 29, 2015. We wish to clarify that, contrary to our original testimony, the nursing facility sustainability program special fund's exemption from the central service expenses assessment is not subject to repeal and reenactment on June 30, 2015. This exemption was preserved under Act 124, Session Laws of Hawaii 2014. While this clarification does not affect our recommendations, we have made an additional change to our proposed amendment to section 7 of Act 124 for clarity. For the Committee's convenience, those recommendations are set forth below.

This measure extends the sunset date of the nursing facility sustainability program and updates the referral dates in the statute. This measure also deletes the exemption of the nursing facility sustainability program special fund from the central service expenses assessment and administrative expenses assessment under sections 36-27 and 36-30, Hawaii Revised Statutes (HRS), respectively, effective December 31, 2016. There are some technical problems with this measure as drafted, which have been addressed in two administration measures, House Bill No. 934 and Senate Bill No. 1103, HMS-05(15), both relating to the nursing facility sustainability program.

Act 156, Session Laws of Hawaii 2012, exempted the nursing facility sustainability program special fund (the special fund) from the administrative expenses assessment imposed by section 36-30, HRS. In 2014, the legislature exempted the special fund from the central service

expenses assessment imposed by section 36-27, HRS, and made a minor amendment to the administrative expenses assessment exemption under section 36-30, HRS. See Act 124, Session Laws of Hawaii 2014. Both sections 36-27 and 36-30, HRS, are subject to repeal and reenactment on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009. Act 124, Session Laws of Hawaii 2014 provides that the exemption from HRS 36-27 and amendment to the exemption under section 36-30 shall not be repealed at that time. The effect of repeal and reenactment of sections 36-27 and 36-30 will be that the special fund loses its exemption from the administrative expenses assessment since Act 124 only preserved the *changes* it made to section 36-30, HRS, and not the initial exemption of the administrative expenses assessment under Act 156, Session Laws of Hawaii 2012. Therefore, the special fund will then be subject to paying the administrative expenses assessment beginning July 1, 2015. Under section 4 of this measure, the special fund is extended to December 31, 2016, therefore, the special fund would be subject to the administrative expenses assessment between July 1, 2015 and December 31, 2016.

Because this measure extends the sunset date of the nursing facility sustainability program and anticipates removing the exemptions in sections 36-27 and 36-30, HRS, on December 31, 2016, it appears that the intent of the bill is to preserve those exemptions through December 31, 2016. In order to do so, it is important that the creation of, and any subsequent amendments to, each exemption under sections 36-27 and 36-30 be protected from repeal and reenactment under section 34 of Act 79, Session Laws of Hawaii 2009. This will require amending Act 156, Session Laws of Hawaii 2012, which first exempted the special fund from the administrative expenses assessment, as well as Act 124, Session Laws of Hawaii 2014, which amended the exemption from the administrative expenses assessment.

Although section 7 of Act 124, Session Laws of Hawaii 2014, addressed the effect of repeal and reenactment under section 34 of Act 79, Session Laws of Hawaii 2009, this did not effectively preserve the administrative expenses assessment exemption under section 36-30, HRS. As noted above, it only preserved the *change* made to the administrative expenses assessment exemption under Act 124. In addition, the inclusion of additional repeal and reenactment language in Act 124 caused confusion. We consulted with the Legislative Reference Bureau (LRB) staff during the drafting and review of the administration measures,

House Bill No. 934 and Senate Bill No. 1103, to address the concerns regarding clarity of the repeal and reenactment provisions. We therefore make the following recommendations, which are consistent with the recommendations contained in the administration measures, to ensure that the exemptions from the central service expenses and administrative expenses assessments are preserved beyond June 30, 2015:

1. That section 4 of this measure amending section 5 of Act 156, Session Laws of Hawaii 2012, as amended, be amended to read as follows to preserve the exemption from the administrative expenses assessment under section 36-30, HRS through December 31, 2016:

SECTION 4. Act 156, Session Laws of Hawaii 2012, as amended by section 3 of Act 142, Session Laws of Hawaii 2013, and as amended by section 2 of Act 124, Session Laws of Hawaii 2014, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, ~~[2015;]~~ 2016; provided that section ~~-4~~, Hawaii Revised Statutes, established by section 2 of this Act, and section 3 of this Act, shall be repealed on December 31, ~~[2015;]~~ 2016; and provided further that the amendment to section 36-30(a), Hawaii Revised Statutes, in section 3 of this Act, shall not be repealed when section 36-30, Hawaii Revised Statutes, is reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009."

2. That the following section be added to amend Act 124, Session Laws of Hawaii 2014, to make clarifying amendments to paragraph (2), remove the unnecessary and confusing reference to repeal and reenactment in paragraph (3), and extending the repeal date of sections 3 and 4 of Act 124 to December 31, 2016:

SECTION _____. Act 124, Session Laws of Hawaii 2014, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect on June 29, 2014; provided that:

- (1) Section 5 shall take effect on July 1, 2014;
- (2) The amendments made to sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, in sections 3 and 4 of this Act shall not be repealed when sections 36-27 and 36-30, Hawaii Revised Statutes, are reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009; and
- (3) ~~[The amendments made in sections]~~ Sections 3 and 4 shall be repealed on December 31, ~~[2015;]~~ 2016. ~~[and sections 36-27 and 36-30, Hawaii~~

~~Revised Statutes, shall be reenacted in the form provided in section 34 of Act 79, Session Laws of Hawaii 2009.]"~~

We respectfully request that this Committee amend the bill as suggested above.



Friday, January 30, 2015
Conference Room #329

House Committee on Health

To: Rep. Della Au Belatti, Chair
Rep. Richard Creagan, MD, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: **Testimony in Strong Support**
HB582 — Relating to the Nursing Facility Sustainability Program

The Healthcare Association of Hawaii (HAH) is a 160 member organization that includes all of the acute care hospitals in Hawaii, the majority of long term care facilities, all the Medicare-certified home health agencies, all hospice programs, as well as other healthcare organizations including durable medical equipment, air and ground ambulance, blood bank and respiratory therapy. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing nearly 20,000 people statewide.

Thank you for this opportunity to testify in **strong support** of HB582, which extends the sunset date of the Nursing Facility Sustainability Program to June 30, 2016.

The Legislature created this program three years ago by enacting Act 156, SLH 2012. Recognizing that Medicaid payments were below the actual costs of care, this program increases Medicaid payments to nursing facilities. The program does that by assessing a fee on nursing facilities, using the revenue to obtain matching federal Medicaid funds, and returning a majority of the combined amount directly to nursing facilities.

Non-government nursing facilities are assessed an annual fee based on the amount of care they provide. Payment is based on the amount of a nursing facility's Medicaid utilization. As such, the fees and payments are different for every nursing facility.

Nursing facilities constitute a critical element of the health care continuum, and the majority of residents in Hawaii's nursing facilities are Medicaid enrollees. They are the ultimate beneficiaries of this bill, which ensures that they continue to have access to quality care. It is important to note that the program requires no state or taxpayer funding. The program actually generates revenue for the state and its healthcare facilities.

Thank you for the opportunity to testify in strong support of HB582.

Phone: (808) 521-8961 | Fax: (808) 599-2879 | HAH.org | 707 Richards Street, PH2 - Honolulu, HI 96813

Affiliated with the American Hospital Association, American Health Care Association, National Association for Home Care and Hospice,
American Association for Homecare and Council of State Home Care Associations



THE QUEEN'S HEALTH SYSTEMS

HB 582, Relating to the Nursing Facility Sustainability Program
House Committee on Health
January 30, 2015, 10:10 A.M.
Room 329

Dear Chairwoman Belatti and Members of the House Committee on Health:

My name is Paula Yoshioka, and I am a Senior Vice President at The Queen's Health Systems. I would like to express my strong support for HB 582, a bill relating to the Nursing. This bill would reauthorize the Hospital Sustainability Program for an additional year.

The Nursing Facility Sustainability Program issues a fee on nursing facilities in the state. The revenue generated by this fee is used to draw down matching federal funds. Nursing facilities, in turn, receive an increased reimbursement rates from the state based on the number of Medicaid patients they serve.

Nursing facilities in Hawaii are an integral part of the continuum of care that our community relies on. Extending this program for another year will help to ensure that our most underserved families have access to needed care.

I ask that you support the continuation of the Nursing Facility Sustainability Program. Your favorable vote on this bill will allow collaborative efforts between the Hawaii Department of Human Services, the Healthcare Association of Hawaii and nursing facilities to ensure access to safety net services for residents across the state to continue.

Thank you for your time and consideration of this matter.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Health
Friday, January 30, 2015 at 10:10 A.M.
Conference Room 329, State Capitol**

**RE: HOUSE BILL 582 RELATING TO THE NURSING FACILITY
SUSTAINABILITY PROGRAM**

Chair Belatti, Vice Chair Creagan, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **supports** HB 582, which continues the Nursing Facility Sustainability Program for one year and appropriates funds out of the Nursing Facility Sustainability Program Special Fund for Fiscal Year 2015-2016.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This bill helps the state and Hawaii hospitals utilize this program to leverage much needed federal dollars for nursing facilities. A sustainable hospital network and health care industry is vital to the health of our employees, business, and our overall quality of life.

Thank you for the opportunity to testify.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Everyday"

**House Committee on Health
Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair**

January 30, 2015
Conference Room 329
10:10 a.m.
Hawaii State Capitol

**Testimony Supporting House Bill 582 Relating to the Nursing Facility Sustainability Program
Continues the Nursing Facility Sustainability Program for one year; appropriates funds out of the Nursing Facility Sustainability Program Special Fund for Fiscal Year 2015-2016.**

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony in support of HB 582 that continues the Nursing Facility Sustainability Program.

Given that health care provider reimbursements are declining at both the federal and state level, it is imperative that health care providers find innovative ways to generate revenues to offset the decline in reimbursements. We believe that the concept of a provider fee on health care items or services provided by nursing facilities is a good financing mechanism that leverages federal funds to increase the reimbursements to nursing facilities from the MedQUEST programs.

As is common in other states that have implemented sustainability fee programs, the public hospitals of the Hawaii Health Systems Corporation are being exempted from the nursing facility sustainability program. This is being done to maximize both the amount of federal funds that the private nursing facilities will receive through the nursing facility sustainability fee program and the amount of federal matching funds the public hospitals can receive under the State of Hawaii's Section 1115 waiver. As a matter of public policy, the public hospitals should be allowed to utilize their certified public expenditures to the maximum extent possible for their exclusive benefit as a means of continuing financing for their operating deficits. In this way, the greatest amount of federal funds

may be realized and the private nursing facilities and the public hospitals as a whole will receive greater reimbursements than they are currently receiving.

Thank you for the opportunity to testify before this committee. We would respectively recommend the Committee's support of this measure.

creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 29, 2015 1:22 PM
To: HLTtestimony
Cc: dstevens@hawaiiipca.net
Subject: Submitted testimony for HB581 on Jan 30, 2015 10:10AM
Attachments: HB581_HospSust_HLT_1-30-15.pdf

HB581

Submitted on: 1/29/2015

Testimony for HLT on Jan 30, 2015 10:10AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------|--------------|--------------------|--------------------|
| Robert Hirokawa | HPCA | Support | No |

Comments:

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House Committee on Health

The Hon. Della Au Belatti, Chair

The Hon. Richard P. Creagan, Vice Chair

Testimony on House Bill 581
Relating to the Hospital Sustainability Program
Submitted by Robert Hirokawa, Chief Executive Officer
Friday, January 30, 2015, 10:10 a.m., Room 329

The Hawaii Primary Care Association supports HB 581, which makes adjustments to the Hospital Sustainability Program and extends its sunset date to June 30, 2016.

Recognizing that Medicaid payments to hospitals were far below the actual costs of care, the Legislature created the Hospital Sustainability Program by enacting Act 217, SLH 2012, which increases Medicaid payments to hospitals. The program achieves this by assessing a fee on hospitals, using the revenue to obtain matching federal Medicaid funds, and returning a majority of the combined amount directly to hospitals. Payment is based on the amount of a hospital's uncompensated care, which consists of nonpayment by uninsured patients and underpayment by Medicaid.

Thank you for the opportunity to testify.

creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 29, 2015 1:31 PM
To: HLTtestimony
Cc: dstevens@hawaiiipca.net
Subject: Submitted testimony for HB582 on Jan 30, 2015 10:10AM
Attachments: HB582_NursingSust_HLT_1-30-15.pdf

Categories: Purple Category

HB582

Submitted on: 1/29/2015

Testimony for HLT on Jan 30, 2015 10:10AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------|--------------|--------------------|--------------------|
| Robert Hirokawa | HPCA | Support | No |

Comments:

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House Committee on Health

The Hon. Della Au Belatti, Chair

The Hon. Richard P. Creagan, Vice Chair

Testimony on House Bill 582
Relating to the Nursing Facility Sustainability Program
Submitted by Robert Hirokawa, Chief Executive Officer
January 30, 2015, 10:10 am, Room 329

The Hawaii Primary Care Association supports HB 582, which makes adjustments to the Nursing Facility Sustainability Program and extends its sunset date to June 30, 2016.

The Legislature created this program two years ago by enacting Act 156, SLH 2012. Recognizing that Medicaid payments were below the actual costs of care, this program increases Medicaid payments to nursing facilities. The program does that by assessing a fee on nursing facilities, using the revenue to obtain matching federal Medicaid funds, and returning a majority of the combined amount directly to nursing facilities.

Thank you for the opportunity to testify.